COLORADO
Department of Health Care Policy & Financing

Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

November 17, 2015

Carol Backstrom, Director
Intergovernmental & External Affairs Group
Center for Medicaid and CHIP Services
Centers for Medicare and Medicaid Services
Woodlawn, MD

RE: Request for Comment: Medicaid Services "Received Through" an Indian Health Service/Tribal Facility

Dear Ms. Backstrom:

I am writing to you on behalf of Colorado's single State Medicaid and Children's Health Insurance Program (CHIP) agency, the Department of Health Care Policy and Financing to provide comment related to the proposed policy change by the Centers for Medicare Medicaid Services (CMS) regarding the circumstances in which 100 percent federal funding would be available for services furnished to Medicaid-eligible American Indian and Alaska Native (AI/AN) individuals through facilities of the Indian Health Service (IHS) or Tribes.

Colorado shares CMS' interests in improving access to care for AI/AN Medicaid beneficiaries and feels that having state context for our responses will be helpful. In 2014, Colorado's population of American Indian/Native Alaskan was estimated at 85,694 or 1.6 % of the total state population. There are two federally-recognized tribes in the state – the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe. Their reservations are located in Southwestern Colorado; an estimated 7,021 AI/AN individuals reside in that geographic region. That means the vast majority of Colorado's AI/AN population live outside tribal lands, and most of these individuals live in the greater Denver metropolitan area. Denver is home to an urban Indian health organization, Denver Indian Health and Family Services, which is one of 15 nation-wide that is designated as a Federally Qualified Health Center (FQHC).

Colorado welcomes CMS' proposals to expand their interpretation of §1905 (b) of the Social Security Act to cover all services for which an IHS facility, a tribal health facility is authorized to provide, as well as those services provided through a Purchased or Referred Care (PRC) referral.

However, Colorado strongly encourages CMS to expand its interpretation to include services provided by urban Indian health programs funded under the Indian Health Care Improvement Act so long as those services are provided to eligible beneficiaries of the Indian Health Service. Colorado believes such expanded interpretation would better meet the intent of the 100 percent federal match agreement and the needs of Colorado's American Indian and Alaska Native populations, the majority of whom live outside tribal lands and far from IHS/Tribal facilities.

In response to the specific topics for which CMS is requesting comment, Colorado has the following reply:

SPECIFIC QUESTIONS CONCERNING WHICH CMS IS SEEKING COMMENT:

1. *Modifying the second condition.* CMS is strongly considering an option under which a service "received through" an IHS/Tribal facility could be any services encompassed within a Medicaid state plan benefit category that the IHS/Tribal facility is authorized to provide.
   Response: Colorado agrees that the definition of "received through" an IHS/Tribal facility should include all Medicaid-covered services that the facility is authorized to provide.

2. *Modifying the third condition.* CMS is strongly considering an option that would expand the meaning of a contractual agent to include a qualified individual or entity that is enrolled as a Medicaid provider and who provides items or services not within the scope of a Medicaid "facility services" benefit but within the IHS/Tribal facility authority, pursuant to a written contract under which the services for the Medicaid beneficiary are arranged and overseen by the IHS/Tribal facility, and the individuals served by the contractual agent are considered patients of the facility. Urban Indian Health Programs could participate as contractual agents.
   Response: Colorado applauds CMS recognition that services provided under a written contract with an IHS/Tribal facility meets the definition of "received through" and that urban Indian health programs are welcome to participate as contractual agents.

3. *Modifying the fourth condition.* CMS is strongly considering an option under which IHS/Tribal facilities would have a choice of specifying in the written contracts with contractual agents whether the facility would bill the state Medicaid program for the services (accepting assignment from contractual agents who are not providing a services within a Medicaid facility benefit category) or whether the contractual agent would bill the state Medicaid program directly.
   Response: In order to ease administrative burden and ensure appropriate identification of those services eligible for 100 percent federal match, Colorado would prefer that the IHS/Tribal facility bill the state Medicaid program, rather than the contractual agent. Should the services be billed directly by the contractual agent, states would need to develop mechanisms to distinguish when a service is being provided to an eligible AI/AN beneficiary under a contractual agreement and when the service is not covered under a contractual agreement.

4. *Application to fee-for-service.* CMS proposes the option that if an IHS/Tribal facility chooses to provide Medicaid services that could be funded through the IHS/Tribal

authority but are not within the scope of the applicable facility benefit (personal care, home health, 1915 (c) waiver services) those services will be paid at the state plan FFS rates applicable to those services.
Response: Colorado supports the inclusion of all Medicaid covered services provided by an IHS/Tribal facility in being eligible for payment with 100 percent federal match. Colorado asks that CMS provide additional clarification around the interaction of payments when both a FFS-reimbursable service and an encounter-reimbursable service are provided on the same date.

5. *Application to managed care*. CMS is strongly considering the following clarification with respect to services provided to AI/AN individuals enrolled in managed care plans: To the extent that services are furnished by an IHS/Tribal facility or its employees to AI/AN individuals enrolled in a managed care plan, the state would be able to claim the 100 percent FMAP for the portion of the capitation rate that would be eligible.
Response: Colorado welcomes CMS recognition of managed care in providing services to Medicaid beneficiaries, and the opportunity to include 100 percent FMAP considerations in claiming and reporting for those capitation rates.

Thank you for the opportunity to provide comment on these proposed policy improvements regarding the availability of 100 federal funding for services furnished to AI/AN Medicaid beneficiaries. Should you have any questions, I can be reached at Barbara.prehmus@state.co.us or via telephone at (303) 866-2991.

Sincerely,

Barbara B. Prehmus, M.P.H.
Federal Policy & Rules Officer

Cc: Ms. Susan E. Birch, MBA, BSN, RN, Executive Director
Ms. Gretchen Hammer, Medicaid and CHIP Director
Ms. Kitty Marx, Division of Tribal Affairs